101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3085-2012 (O&M)
Date of decision-08.10.2015

DHAN SINGH **...Appellant**

VS

RAJ BALA AND ORS **...Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:-Mr. Abhinav Sood Advocate
for the appellant.

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<u>RAJ MOHAN SINGH, J. (Oral)</u>

[1] Plaintiff is in second appeal in a suit for declaration and permanent injunction. Plaintiff alleged that he is owner in possession of 3 kanals 7 marlas of land. Gift deed dated 17.02.2006, is claimed to be illegal, null & void. Plaintiff alleged that he asked his brother Chanderhas to assist him in the process of taking loan from the Bank in December 2006. Chanderhas brought him to the Office of Sub-Registrar and asked him to sign some document under the pretext of mortgaging the property in favour of Bank. Thereafter, in October, 2007, brother of the plaintiff, Chanderhas died and he came to know about the factum of gift deed only on 17 July, 2008. With this background the suit in question came to be filed.

[2] Trial Court decided issue No.1 i.e whether plaintiff is entitled for declaration and permanent injunction by referring to the evidence on record. Plaintiff has alleged fraud at the instance of Chanderhas. In support of his case, he himself steeped into witness box as PW-1 and also examined neigbour Virender as PW-2, who got himself examined-in-chief, but he was not produced for cross-examination.

[3] Dhoop Singh has been examined from the Office of Sub-Registrar in the context of proving gift. One Himmat Singh has also been examined as PW-4 who has deposed on record that plaintiff is in continuous possession of the suit land.

[4] As against this the defendant has also deposed with reference to evidence on record to say that the signatures appearing on the gift deed is in Hindi and the plaintiff has also admitted that he used to sign in Hindi. Signatures of the plaintiff on gift deed is an admitted fact. The burden of proving the issue No.1 is on the plaintiff. Plaintiff has not discharged his initial onus. Plaintiff is matriculate. He after alleged execution of gift deed, waited for a period of two years without ascertaining as to what had happened to the loan transaction.

[5] Admittedly, loan was never advanced to the plaintiff. Plaintiff's story is also conspicuously missing in the context of not moving an application for obtaining loan before the Bank. No Bank Official has been examined, nor anybody from the Bank accompanied to the office of Sub-Regisrar when alleged mortgaged deed was to be executed in favour of Bank. Factum of plaintiff being in possession has also been disbelieved by the Courts below for want of any evidence on record. Particulars of fraud in terms of Order 6 Rule 4 CPC have not been proved on record.

[6] On the other hand, original gift deed has been produced as Exhibit D-1 and the same has been duly proved by DW-2 i.e. Dhoop Singh Registry Clerk. Besides the testimony of DW-1 Subhash Mehta Tehsildar, has also been examined as DW-3.

[7] Since the factum of signatures appearing on the gift deed is an admitted fact, in considered opinion of this Court the findings recorded by both the Courts below cannot be said to be perverse or the result of misreading of evidence in any manner. The question of law as formulated by the appellant in the case are not attracted to the given situation.

[8] Question No.1 is in respect of perversity and it has not been found as a matter of fact by the Courts below with reference to evidence. Signatures on the gift deed is an admitted fact. The story propounded by the plaintiff that it was under the pretext of obtaining mortgaged deed has not been proved on record with reference to any statement of Bank official nor any application for obtaining loan has been produced on record. The plaintiff himself waited for more than two years to ascertain whether loan has been sanctioned in his favour or not.

[9] Question No.2 is also on this very premise. No material has been produced on record to contend that the judgment and decree passed by the Courts below are perverse or are the result of misreading of evidence.

[10] Question No.3 is also covered in the aforesaid mechanism. No particulars of fraud have been pleaded and proved on record. The instance of purchase of stamp paper in the name of Chanderhas cannot be treated to be sufficient evidence to nullify the findings recorded by the Courts below particularly when the endorsement appearing at the back of the stamp paper itself shows the name of purchaser. The effort to bring additional evidence in terms of Order 41 Rule 27 CPC at appellate stage has been rightly discarded by the Lower Appellate Court in view of the fact that once plea of fraud has been taken, requirement of such application was held to be in-consequential in nature. Since ingredients of fraud have not been pleaded and no evidence has been led to prove the fraud, therefore this question also does not arise.

[11] With regard to question No.4, even, if Chanderhas is to be in fiduciary relationship, no evidence has been brought on record to substantiate this plea. Therefore, question No.4 also does not arise.

[12] Having considered the matter in detail, this Court is of the opinion that no inference is called for in this appeal.

Hence this appeal is dismissed.

October 08, 2015 **(RAJ MOHAN SINGH)**
vanita **JUDGE**